DOCUMENT RESUME

ED 325 974 EA 022 476

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TITLE Academic Decisions. A Legal Memorandum.
INSTITUTION National Association of Secondary School Principals, Reston, Va.
REPORT NO ISSN-0192-6152
PUB DATE Nov 90
NOTE 9p.
AVAILABLE FROM Publication Sales, National Association of Secondary School Principals, 1904 Association Drive, Reston, VA 22091 ($1.75; quantity discounts).
PUB TYPE Collected Works - Serials (022) -- Legal/Legislative/Regulatory Materials (090)
JOURNAL CIT A Legal Memorandum; Nov 1990

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Academic Freedom; *Court Litigation; Decision Making; Elementary Secondary Education; Enrollment; Equal Protection; Grading; Grouping (Instructional Purposes); *Legal Problems; Principals; *School Law; *Secondary Schools; Student Evaluation; Student Placement; Student Promotion; Student Rights

ABSTRACT

Academic decisions related to grouping, grading, and student promotion are discussed in this legal memorandum for secondary school principals. Federal and state court cases involving enrollment, student placement, promotion, grading, graduation, and gender-based classification are examined. Conclusions are that judges tend to respect an educator's reasonable choice and that the purpose of the court system is to examine legality. (50 endnotes) (LMI)

A Legal Memorandum

November 1990 *National Association of Secondary School Principals* ISSN 0192-6152

Academic Decisions

Academic decisions like those related to grouping, grading, and promotion lie at the heart of schools' responsibilities, and educators are uniquely qualified by training and experience to make them.

These decisions are also—and not coincidentally—the ones courts are most reluctant to review. When courts do review them, they refuse to substitute their judgment for school officials' judgment.

The Supreme Court has said that when judges review the substance of a genuinely academic decision, they should show great respect for the faculty's professional judgment. They may not override the decision unless it represents "such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment."[1]

Although this statement was made in a case involving a medical student, the basic principle applies at all levels of education. Judges do not want to second-guess educators and school board members. As long as school officials' decisions are reasonable and respect students' rights, they will be upheld.

The Supreme Court has said that when judges review the substance of a genuinely academic decision, they should show great respect for the faculty's professional judgment.

Nevertheless, there is a point at which courts have no choice but to become involved. When a student claims that his or her constitutional or statutory rights have been violated, the judiciary must resolve the dispute.[2] For example, while no student has a right to a particular placement or grade, all students have a right to be free from illegal discrimination and arbitrary decisions, and when a student alleges that he or she is the victim of such discrimination or such a decision, the court must decide whether the student is correct, and if so, what the remedy shall be.

Enrollment

Elementary and secondary students have a property interest in their public education.[3] They are entitled to enter and remain in the regular educational program unless school authorities follow due process procedures in excluding them or changing their placement. But their property interest does not normally include the right to enroll in particular classes or to be assigned to particular teachers. Therefore, students are entitled to due process in decisions about enrollment in classes only if a specific state statute grants them an entitlement to a particular assignment.

In 1964, the North Carolina state supreme court heard a case in which the plaintiff asked for assignment to a specific school.[5]

In that case, a student who planned to go to college had taken Latin and was a member of the band as a freshman. But after her parents moved, she was assigned for her sophomore year to a school that offered neither Latin nor band. Her parents sued. They asked that she be reassigned to her former school, which was only three miles from her new home, but in a different school administrative unit.

The court ordered her reassignment to her former high school on the basis of the child's best interest and the proper administration of the school she wanted to attend. But it based its decision on a specific state statute that created an exception to the general rule that the school board has the final say in student assignment. That exception emphasized the welfare of the child and the effect on the school to which the reassignment was requested

There is no comparable statute granting a right to enroll in particular courses, and principals alone do not have the authority to make such assignments for students with special needs.

Placement

Statutes often confer upon principals the authority to assign students to grade levels, classes, and individual courses,[6] but many of these decisions should be made only after consulting with others. Also, these decisions may usually be appealed to the board of education.

Assignment and placement decisions based on an evaluation of a student's ability or achievement often leads to disappointment but only occasionally to lawsuits.

At the elementary school level, students within a class may be divided into groups; groups of students may be created from several classes who are at the same grade level; or students from different age groups may be mixed together.

With older students, judgments about ability and achievement may be used as a basis for recommendations about enrollment in certain classes or for limiting enrollment in particular classes to those who meet a set standard. For example, a school rule might prohibit a student in an eighth grade honors science course who does not receive at least a B from registering for the honors class the following year.

Courts generally defer to educators' decisions about grouping and placement of students. As one court explained, "The merits of a program which places students in classrooms with others perceived to have similar abilities are hotly debated by educators; nevertheless, it is educators, rather than courts, who are in a better position ultimately to resolve the question whether such a practice is, on the whole, more beneficial than detrimental to the students involved."[7]

Ability Grouping

Ability grouping is the practice of assigning students to an instructional setting for a sustained period of time on the basis of perceived ability. (Informally grouping students within the regular classroom for a short period of time is not usually considered ability grouping.)

Assignments to a particular group are based on assumptions about a child's ability; those assumptions are most often based on the child's past performance in school and on standardized test scores.

The use of ability grouping has been challenged as a practice and as applied to individual students. No court has ruled that ability grouping cannot be a valid educational tool or that it is itself unconstitutional or a violation of equal educational opportunity.

In general, the practice will be upheld when two conditions are met:

1. The grouping plan must serve a legitimate educational purpose. Although research on the benefits of ability grouping is far from conclusive, a school system that uses it should be able to point to some evidence that grouping leads to better educational opportunities for students.

2. Students must be assigned in a nonarbitrary and nondiscriminatory manner. When the assignment system has been based on educational criteria and is reasonably related to the purposes of public education, ability grouping has been upheld.[8]

In several lawsuits challenging grouping, plaintiffs have alleged discrimination on the basis of race, a violation of the equal protection clause of the Fourteenth Amendment. In cases involving schools that had been desegregated only a few years, courts prohibited the assignment of students to classes on the basis of apparent ability when the practice led to racially unbalanced classes. The differences were thought to result not from real differences in ability but from students' experiences in segregated schools.[9]

Courts generally defer to educators' decisions about grouping and placement of students.

But even these courts did not rule that racially disparate grouping automatically violates the equal protection clause. For example, the Fifth Circuit Court of Appeals has upheld grouping methods in previously segregated school districts when school systems were able to show either that racial disparity in the groups was not the present result of past segregation or that grouping would remedy the disparity by offering students better educational opportunities.[10]

Ability grouping that leads to racially unbalanced groups also has been upheld when the method for forming the groups was not intentionally discriminatory. For example, parents in a Texas school district unsuccessfully challenged ability grouping in grades three through eight because it resulted in a disproportionate number of Mexican-American children in remedial classrooms.

The grouping was upheld because, as the court

explained, "as a general rule, school systems are free to employ ability grouping, even when such a policy has a segregative effect, so long, of course, as such a practice is genuinely motivated by educational concerns and not discriminatory motives."[11] The court later affirmed the finding that the grouping was not a vestige of illegal discrimination and did not discriminate on the basis of race.[12]

The court also noted that because decisions were based on several measures, including English achievement test scores, school grades, teacher evaluations, and recommendations of school counselors, the possibility that placement would be determined solely by a child's racial or ethnic background was remote.

In a 1985 case that involved a variation on ability grouping, the Fourth Circuit Court of Appeals adopted a different approach. Parents of black students in Maryland claimed that the assignments of pupils to special programs for children identified as gifted and talented were racially discriminatory. The federal district court ruled that the method of assigning pupils was acceptable because, although there were racial disparities in the gifted and talented groups, these disparities did not result from earlier segregation or intentional discrimination.[13]

The court of appeals reversed in part and remanded the case because the lower court had not properly evaluated the claim.[14] The appeals court explained that because the school district had not attained unitary status (that is, it had not been found to be fully desegregated by a court), the plaintiffs were entitled to a presumption that the current disparities were caused by earlier segregation. The defendant school board had the burden of proving otherwise.

Courts appear to accept disparate racial grouping as reflections of individual student's differing readiness for various subjects or components of courses.

Had the school system been unitary, the burden of proof would have been on the plaintiffs to show intentional discrimination by the school system. In a unitary system, the effect of the grouping (the racially unbalanced groups) may be evidence of intent but is not in itself proof of an illegal motive.[15]

As we move further from the days of dual school systems, it is more difficult for plaintiffs to link techniques that result in racially identifiable groups with past segregation or to prove intentional discrimination by the school system.

Courts appear to accept disparate racial grouping as reflections of individual student's differing readiness for various subjects or components of courses. While flatly rejecting the view that there are innate differences in intelligence arising from students' race,[16] courts seem willing to accept the view that the disparate racial impact derives from nonracial factors like family circumstances or socioeconomic status.[17]

The same principles used to challenge grouping practices are applied when the placement of one child in a particular group is challenged. In Missouri an elementary school combined its 80 first and second graders and assigned three teachers to instruct them. During the day students were mixed and divided in different classrooms on the basis of subject matter taught in each room.

When another teacher was hired, a black student was transferred from one math class to another. The parents challenged the transfer, claiming that the decision was racially motivated, but the court found that the transfer was based on the child's performance and behavior and upheld it.[18]

The identification of children with special needs has been challenged on the same grounds (illegal discrimination) as ability grouping because, in many cases, proportionately more children from minority groups are found to have handicaps than white students.

A complete discussion of this issue is beyond the scope of this *Memorandum*, however, as a general rule, these classifications will be upheld as long as school officials follow procedures in federal and state laws regarding handicapped children, base their decisions on the individual child, and do not discriminate on the basis of race or national origin.

Achievement Grouping

Another method of grouping students is based on their past achievement and mastery of particular skills at a particular time, not on a prediction about ability or potential. This method of grouping has been challenged as a violation of equal protection and Title VI of the Civil Rights Act of 1964.

As with ability grouping, however, no court has ruled that achievement grouping is per se unacceptable. Instead, courts typically begin with the assumption that achievement grouping may be an educationally sound tool and that educators are in the best position to decide whether and when this is so. They then use the same reasoning to analyze other classification schemes.

A unitary school district in Mississippi used achievement grouping in English and mathematics through sixth grade. Students were divided into three groups for approximately 40 percent of the school day. The court

upheld the practice against the claim of illegal discrimination based on race.[19]

The school system had been unitary for almost 16 years, and the "minimal segregative effect" of the grouping practices did not reflect either the effects of past discrimination or an intent to segregate. Minority-group students were not locked into groups but were likely to shift and improve over the years.

Achievement grouping was also challenged by black parents in Georgia who claimed that it was intended to achieve, or resulted in, intraschool racial segregation. The court upheld the practice in a school system whose students had never attended a dual school system, though the system was not yet completely unitary.[20]

Achievement grouping that is not intentionally discriminatory is permissible even though it results in racial disparity (for example, more blacks in lower-achievement groups than would occur in a random selection) when the district can show that its assignment method is not based on the present results of past segregation or that it will remedy such results through better educational opportunities.

In the Georgia case, school officials offered evidence that the grouping provided better educational opportunities for all students, including lower-achieving students, and that no students were permanently locked into any particular group.

Nor did the court find a violation of Title VI in this case.[21] Title VI bans all intentional racial discrimination but also some practices that have a disparate impact on minority groups.[22]

Applying a disparate-impact analysis to the Title VI claim, the court required the plaintiffs to first provide evidence of discrimination (which the Georgia plaintiffs did by showing the racial composition of the classrooms). Then the defendants had an opportunity to provide a substantial legitimate justification for their practice; in this case the defendants proved that achievement grouping was an "educational necessity."

If the plaintiffs can show that the defendants' justification is a pretext for discrimination or that an equally effective alternative practice would result in less racial disproportion they win the lawsuit.

The Georgia plaintiffs were unable to prove that the justification was a pretext, and the appeals court upheld the trial court's finding that the plaintiff's proposed alternative—random assignment and intraclass grouping—was not an equally sound alternative to interclass grouping.

Tracking

Tracking is the practice of assigning students to a particular, usually permanent, track such as precollege or vocational, based on either perceived ability or achievement or some combination of them. While ability or achievement grouping typically affects a child's placement in only one class or a few classes, tracking may affect all or nearly all courses in a student's high school years.

Tracking has fallen into disfavor for many reasons, both legal and educational. Few school systems, if any, use formal tracking. Some informal tracking continues, although it is designed—at least on paper—to permit movement of students from one track to another. The legal issues in tracking cases are the same as those in ability grouping cases.

Many of these issues were raised more than 20 years ago in a case that challenged tracking in Washington, D.C. The court found that tracking as administered in that school system deprived students of their right to an equal educational opportunity and violated the equal protection and due process clauses of the Fourteenth Amendment.[23] The tracking system perpetuated the legacy of segregated schools through discrimination against black pupils, who were clustered in the "lower" tracks.

Assignment of students to tracks was not directly related to their ability to learn, yet the vocational choices of students assigned to a lower track were significantly limited. Students were placed in a track early in their school career and remained essentially locked in that track.

In prohibiting use of this system, the court emphasized that it was not prohibiting tracking per se: "[W]hat is at issue here is not whether defendants are entitled to provide different kinds of students with different kinds of education. Although the equal protection clause is, of course, concerned with classifications which result in disparity of treatment, not all classifications resulting in disparity are unconstitutional."[24]

Summary

Placement testing, ability grouping, and achievement grouping are currently accepted educational tools, but may be challenged. In using them and in deciding about a student's ability and future performance, school officials should remember that courts have not prohibited grouping itself but have insisted on an educational reason for the grouping, a process for classifying students that is not discriminatory, and a system that allows students to move from one grouping into another.

In designing or evaluating a program, school officials should remember the following points:[25]

1. Grouping should be used only when some academic

benefit can reasonably be expected to occur. Grouping students for large portions of the school day, regardless of variations in ability or achievement in different subjects, should be avoided.

2. Homogeneous grouping plans for classes like art, music, and physical education are suspect.

3. Students should not be locked into any group or track. Any classification system must allow for periodic reevaluation and change.

4. There should be no fixed quotas based on race or sex.

5. Placement decisions should be based not on a single factor but on a combination of criteria such as past academic record, teacher recommendations, and test scores. If tests are used in making the placement, they must be valid and reliable. For example, achievement results from a reading test should not be used as the basis for grouping students in all subjects.

Grading

Grades—those shorthand symbols of students' academic achievement—are important to students, parents, employers, postsecondary institutions, and school officials. Courts are reluctant to get involved in grading decisions, believing that educators are uniquely qualified to make these judgments.[26] They will interfere only when there is evidence of clerical error, fraud, or arbitrary, discriminatory, or malicious action.[27] Even then the court will not regrade the student.[28]

Faculty members have wide discretion in evaluating students' academic performance. Some state statutes specifically authorize the principal to grade students[29] but, even then, the school board is responsible for developing guidelines to ensure that the principal's power is exercised only in the most extraordinary circumstances.

Even in absence of specific statutory authority a principal may change a teacher's grade without his or her consent if, after conferring with the teacher, the principal determines that the grade was awarded arbitrarily and capriciously—that is, without relation to the student's performance, for reasons unrelated to the grading process, or contrary to law or school board policy.

In most states, too, attendance may be a factor in grading. Usually, however, such policies should not automatically deny course credit for nonattendance and any such policy must be reasonable.[30]

Promotion

Decisions on whether to promote a student are among the most difficult and important that school officials make. Not being promoted may have a serious impact on a student's future school performance, self-esteem, and social adjustment, and there is no clear consensus among educators about the benefits of this practice.[31]

While principals are authorized to classify pupils, a decision to retain a student must follow state and local policies and should be made only after carefully considering the teacher's recommendation and appropriate discussions with the child's teacher and, perhaps, with the student. All parents should be kept informed about their student's academic progress throughout the year so that a decision not to promote a student never comes as a complete surprise.

Meeting state standards does not necessarily mean promotion, because the student must usually meet local promotion standards as well. Local boards must develop their own promotion policies, based on such factors as grades, attendance, maturity, and teachers' judgments as bases for decisions on promotion.

Generally, the courts will uphold promotion decisions unless the student can prove that the decision was arbitrary, unreasonable, or discriminatory.

Sounding a now familiar note, the Fourth Circuit Court of Appeals has said, "Decisions by educational authorities which turn on evaluation of the academic performance of a student as it relates to promotion are peculiarly within the expertise of educators and are particularly inappropriate for review in a judicial context."[32]

This statement was made in a case from Virginia that shows how far this deference extends. School officials retained 21 second graders in a class of 23 because they did not complete the requisite level of the reading series used in that school system.

Decisions on whether to promote a student are among the most difficult and important that school officials make.

Their parents sued the principal, the superintendent, and the school board, contending that the children could read on the third-grade level and had been denied equal protection of the law. But they did not allege that the children were classified on the basis of race or on any other impermissible basis, such as sex, that called for heightened scrutiny; the children were classified accord-

ing to their attained reading level. Also, public education is not a fundamental right that triggers strict scrutiny of equal protection claims.[33] In absence of such a right, the only question, as recognized by all parties, is "whether the classification by the governmental entity which is at issue here is rationally related to a permissible governmental end."[34]

The school officials claimed that their goal was to further the students' education by teaching them at the level of instruction most appropriate to their abilities and needs. They retained students who had not achieved the requisite reading skill because they believed that promoting these children would only increase their reading problems. The court agreed that classifying children according to their reading level was rationally related to a legitimate government objective.

A first grader from Arkansas sued after he was not promoted to second grade. His work was below grade level in both reading and mathematics. Whether by mistake or otherwise, his progress report at the end of first grade indicated that he would be promoted.

The student alleged that the decision not to promote him violated his right to procedural due process because he was not notified (through his mother) of either his nonpromotion or his learning difficulties before the decision was made.

The court rejected his claim, explaining that to be entitled to due process, this student must establish that he has a liberty or property interest in promotion to the second grade. The court found no such interest.[35]

Black parents sued an Alabama school system after it established certain standards in reading that students must meet in order to be promoted. The parents argued that the children would have been promoted under the old standard and that the school district could not suddenly shift to a system that disproportionately affected black students, especially as the schools had previously been segregated.

The court upheld the promotion standards, explaining that parents had no property right in the expectation that substandard scholastic achievement would continue to be accepted as the basis for promotion.[36]

Graduation

To graduate from high school and receive a diploma, public school students must usually meet some specific statutory standards, including:

1. Successful completion of some number of units in grades 9 through 12. These often must include specific numbers of units in English, mathematics, social studies, history, government, and science. Often, physical education and health are also required.
2. Pass certain competency tests selected or prepared by the state board or other agency.

Local school districts may usually adopt requirements or standards in addition to those established by the state that students must then meet to graduate.

It should be noted that the student's right to graduate and receive a diploma or other certificate attesting to the student's satsifactory completion of graduation requirements does not necessarily include the right to participate in the ceremonies incident to graduation. The school district maintains authority to regulate such participation on a reasonable basis even though the student has satisfied all academic requirements for graduation.

Thus, in a North Carolina case in which a student was not permitted to participate in graduation ceremonies for failing to dress in conformity with rules that had been established in advance and communicated to all graduating seniors, a student's suit against a school district was dismissed.[37]

Where the student conduct at issue is unrelated to the graduation ceremony itself, there is less agreement that disciplinary actions can prohibit students from participating in graduation ceremonies.

In one recent Pennsylvania case, it was held that a school graduation ceremony was not within the scope of any property right which might exist regarding receipt of education since such ceremonies are only symbolic of educational end results and are not an essential component of it. A disciplinary suspension for an offense occurring near the end of the school year and which prevented the student from participating in his graduation ceremonies was, therefore, permissible.[38]

Classifications Based on Sex

School officials may not discriminate on the basis of sex in making academic decisions. The days when only boys took auto repair and only girls enrolled in home economics are gone, and all courses must be open to all students.

Also, students of either sex should not be discouraged from taking a particular class or planning for a particular career because of adviser's views about the proper roles for men and women.

Classifications based on sex may be challenged as violations of the equal protection clause of the Fourteenth Amendment, or Title IX of the 1972 Education Amend-

ments,[39] or both. To satisfy the equal protection clause, classification by sex must serve important governmental objectives and must be substantially related to achievement of those objectives.[40]

Title IX, the federal statute prohibiting discrimination based on sex, says "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance." It thus protects students against discriminatory practices and precludes the use of federal funds to assist schools that engage in such practices.

Title IX regulations prohibit the segregation of courses by sex, including courses in health, industrial arts, business, vocational-technical, home economics, music and physical education. But there are some exceptions:

- A school may have requirements based on vocal range or quality that result in a chorus or choruses of one or predominantly one sex.[41]
- Girls and boys may be separated for portions of physical education and health classes that deal exclusively with human sexuality.[42]
- Students in physical education classes may be grouped by ability as assessed by an objective standard of individual performance developed and applied without regard to sex.[43] Where use of a single standard for measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school must use appropriate standards that do not have that effect.[44]
- Also, students may be separated on the basis of sex in physical education classes that involve major elements of body contact—for example, wrestling, boxing, rugby, ice hockey, football, basketball;[45] but such a separation may be challenged under the equal protection clause.[46]

A school may not apply any rule concerning students' actual or potential, parental, family, or marital status that results in students' being treated differently on the basis of sex.[47] Nor may a school base its decisions about a student's placement or participation in activities on her pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from pregnancy unless she voluntarily asks to be placed in a separate portion of the educational program.[48]

But the school may ask a pregnant student to obtain a physician's statement that she is physically and emotionally able to continue participating in the normal education program or activity if such statement is required of all students for other physical or emotional conditions requiring a doctor's attention.[49]

Conclusion

Educators are decisionmakers. They must make decisions about curriculum, teaching materials and techniques, and classroom organization and schedules. They also must make academic decisions about individual students, and these decisions may have a significant and long-lasting effect on a child's academic opportunities and progress.

Judges are decisionmakers, too. But they will not lightly interfere with the professional decisions of educators. In resolving disputes over academic decisions, a court will respect an educator's reasonable choice, even if it may not appear to be the wisest choice or the best choice for the student.

As one commentator said, "A court cannot substitute its judgment for the reasonable judgment of the responsible body. Legality and wisdom are not synonymous. The courts examine legality."[50]

Endnotes

1. Regents of the Univ. of Mich. v. Ewing, 474 U.S. 214, 225 (1985).
2. "Of course, courts should not 'intervene in the resolution of conflicts which arise in the daily operations of school systems' unless 'basic constitutional values' are 'directly and sharply implicate(d)' in those conflicts." Board of Educ. v. Pico. 457 U.S. 853, 866 (1982) [quoting Epperson v. Arkansas, 393 U.S. 97, 104 (1968)].
3. Goss v. Lopex, 419 U.S. 565, 573-74 (1975).
4. Arundar v. DeKalb County School District, 620 F.2d 493 (5th Cir. 1980).
5. In re Hayes, 261 N.C. 616, 135 S.E. 2nd 645 (1964).
6. See, e.g., North Carolina, G.S. 115 C-288(a)(1987).
7. Castaneda v. Pickard, 648 F.2d 989, 996 (5th Cir. 1981). later app. aff'g district court's unpublished opinion on remand. 781 F.2d 456 (5th Cir. 1986).
8. McNeal v. Tate County School Dist., 508 F.2d 1017 (5th Cir. 1975).
9. Moses v. Washington Parish School Bd., 330 F. Supp. 1340 (E.D. La. 1971). aff'd 456 F.2d 1285 (5th Cir. 1972); McNeal v. Tate County School Dist., 508 F.2d 1017 (5th Cir. 1975); United States v. Gadsden County School Dist., 572 F.2d 1049 (5th Cir. 1978); Bester v. Tuscaloosa City Bd. of Educ., 722 F.2d 1514 (11th Cir. 1984).
10. See McNeal, U.S. v. Gadsden, and Casteneda, supra.
11. Castaneda, supra at 996.
12. Castaneda, supra.
13. Vaughn v. Board of Educ., 574 F. Supp. 1280 (D Md. 1983) aff'd in part, rev'd in part, 758 F.2d 983 (4th Cir. 1985).
14. Vaughn, supra.
15. See Riddick v. School Bd. of Norfolk, 784 F.2d 521 (4th Cir. 1986)
16. See e.g., Larry P. v. Riles, 793 F.2d 969 (9th Cir. 1984).
17. See Montgomery v. Starkville Municipal Separate School Dist., 665 F. Supp. 487 (N.D. Miss. 1987).
18. Bond v. Keck, 629 F. Supp. 225 (E.D. Mo. 1986).
19. Montgomery v. Starkville Municipal Separate School Dist., 854 F.2d 127 (5th Cir. 1988).
20. Georgia State Conferences of Branches of NAACP v Georgia, 775 F.2d 1403 (11th Cir. 1985). The court mixed ability and achievement grouping in its discussion, but the school apparently used achievement grouping.
21. 42 U.S.C. §2000d (1982).

22. 775 F.2d at 1417. The court relied on Guardian's Ass'n v. Civil Service Comm'n, 463 U.S. 582 (1983), and Alexander v. Choate, 469 U.S. 287 (1985) (regulations promulgated under Title VI permit the disparate-impact theory to be applied in addition to claims of intentional discrimination).
Regulations enforcing Title VI prohibit the use of "criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race . . . or have the effect of defeating or substantially impairing accomplishment of the objectives of the program." 34 C.F.R §100.3(b)(2) (1987). Thus, the regulations prohibit school placement practices that have a disparate racial impact unless they are necessary to meet the schools education mission.
23. Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967) aff'd sub nom., Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).
24. Id. at 511.
25. Adapted from James Rapp, *Education Law* (New York: Matthew Bender, 1984), 8-147.
26. Board of Curators v. Horowitz, 435 U.S. 78 (1978); Regents of the Univ. of Mich. v. Ewing, 474 U.S. 214 (1985).
27. See, e.g., Eureka Teachers Ass'n v. Board of Educ., 244 Cal. Rptr. 240 (Cal. Ct. App. 1988).
28. See, e.g., Greenhill v. Bailey, 519 F.2d 5(8th Cir. 1975) (remedy is not for the court to regrade the student but rather to order fair and impartial hearing).
29. See, e.g., North Carolina, G.S. 115C-288(a)(1987).
30. See *Legal Memorandum*, "Academic Penalties for Attendance Reasons," March 1985.
31. See, e.g., "Repeating a Grade: Does It Help?" *Harvard Education Letter* 2 (March 1986): 1.
32. Sandlin v. Johnson, 643 F.2d 1027, 1029 (4th Cir. 1981).
33. San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973).
34. Sandlin, supra.
35. Killion v. Burl, 860 F.2d 306 (8th Cir. 1988).
36. Bester v. Tuscaloosa City Bd. of Educ., 722 F.2d 1514 (11th Cir. 1984).
37. Fowler v. Williamson, 448 F. Supp. 497, (W.D. No. Car., 1978), aff'd 251 S.E. 2d 889 (1979).
38. Mifflin County School Dist. v. Stewart, 503 A.2d 1012 (Pa. Cmwlth. 1986). Student's claim was upheld, however, on due process grounds.
39. 20 U.S.C. §1681 (1982).
40. Craig v. Boren, 429 U.S. 190, 197 (1976).
41. 34 C.F.R. §106.34 (1989).
42. Id. at §106.34(e).
43. Id. at §106.34(b)
44. Id. at §106.34(d)
45. Id. at §106.34(c).
46. Several cases have held that, under some circumstances, single-sex sports teams violate the equal protection clause. See, e.g., Saint v. Nebraska School Activities Association, 684 F. Supp. 626 (1988) (wrestling).
47. 34 C.F.R. §106.40(a).
48. Id. at §106.40(b)(1). A school unit that operates any part of its program separately for pregnant students must ensure that instruction in that program is comparable with that offered other students. Id. at §106.40(b)(3).
49. Id. at §106.40(b)(2).
50. E. Edmund Reutter, Jr., *The Law of Public Education*, 3d ed., (Mineola, N.Y.: The Foundation Press, 1985), p. 144.

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This *Legal Memorandum* was written by Laurie L. Mesibov, a member of the faculty of the Institute of Government of the University of North Carolina at Chapel Hill, and an Editor of the Institute's *School Law Bulletin*. The *Memorandum* is a revised version of an article which first appeared in the Summer 1990 edition of the *School Law Bulletin* and is used by NASSP with the permission of the Institute of Government.

A Legal Memorandum is a publication of the National Association of Secondary School Principals, 1904 Association Dr., Reston, Va. 22091. Telephone (703) 860-0200. Annual subscription rate of $4 is included in the NASSP dues. Additional copies may be ordered: single copies, $1.75 each; 2-10 copies, $1.25 each; 11-99 copies, $1 each; 100 or more copies, 85 cents each. Individual subscriptions are not available.

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Appendix 16

END

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March 29, 1991